



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2022-0515; FRL-10220-01-R1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Maine; 111(d)/129 Revised State Plan for Large Municipal Waste Combustors and State Plan for Small Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Clean Air Act (CAA) State Plan for Municipal Waste Combustor (MWC) units submitted by the Maine Department of Environmental Protection (Maine DEP). This submission includes revisions to Maine's previously-approved State Plan for existing Large MWCs in response to amended emission guidelines (EGs) for Large MWCs. This submission also includes a State Plan for existing Small MWCs. Maine DEP's State Plans for Large and Small MWCs implement and enforce provisions at least as protective as the EGs applicable to these subcategories of solid waste incinerators. This action is being taken in accordance with the CAA.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2022-0515 at <https://www.regulations.gov>, or via email to wong.shutsu@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio,

video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Shutsu Wong, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square – Suite 100, (Mail Code 05-2), Boston, MA 02109-3912, tel. 617-918-1078, e-mail wong.shutsu@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. What Is a State Plan?

Section 111(d) of the CAA requires that pollutants controlled under new source performance standards (NSPS) also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes emission guidelines (EGs) applicable to the control of the same pollutant for existing (designated) facilities. States with designated facilities must develop state plans to adopt the EGs into their body of regulations. States must also include in their state plans other elements, such as legal authority, inventories, and public participation documentation to demonstrate their ability to enforce the state plans.

II. Why Does EPA Need to Approve State Plans?

Section 129(b)(2) of the CAA requires states to submit state plans to EPA for approval. Each state must show that its state plan will carry out and enforce the EGs. State plans must be at least as protective as the EGs and will become federally enforceable upon EPA's approval. The procedures for adopting and submitting state plans are in 40 CFR part 60, subpart B.

III. What History Does Maine DEP Have with MWC State Plans?

A. Large MWCs

On April 15, 1998, the Maine DEP submitted a Section 111(d)/129 State Plan for implementing and enforcing EGs for existing Large MWCs with capacity to combust more than 250 tons per day (TPD) of municipal solid waste (MSW) pursuant to 40 CFR Part 60, subpart Cb and Eb, respectively. On December 11, 1998, EPA approved this State Plan (63 FR 68394).

On December 21, 2007, Maine DEP submitted a revised State Plan for Large MWCs. This State Plan incorporated revisions made by EPA to 40 CFR Part 60, Subpart Cb and Eb in 2006. This State Plan did not receive final EPA approval. In 2019, further amendments and updates were made to align the state's rules with Federal requirements, and Maine DEP submitted the revised State Plan to EPA on December 24, 2019.

B. Small MWCs

Maine's December 21, 2007 submittal to EPA containing revisions to its State Plan for Large MWCs also contained necessary elements for a State Plan for Small MWCs. This 2007 submittal did not receive final EPA approval. In 2019, amendments and updates were made to align the state's rules with Federal requirements, and Maine DEP submitted the State Plan to EPA on December 24, 2019.

IV. Why Did Maine DEP Revise the Large MWC State Plan?

Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of NSPS and EGs for solid waste incinerators and to amend standards and requirements as appropriate. Accordingly, EPA promulgated amended standards and requirements for Large MWCs on May 10, 2006 (71 FR 27324). This rulemaking included revised limits for dioxin/furan (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). It also contained revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring systems (CEMS). CEMS are required to generate at least ninety-five percent (95%) data availability on a calendar year basis and at least ninety percent (90%) data availability on a calendar quarter basis. The

compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions include:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An eight-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance test and for two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to relative accuracy criteria for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than nine months and no more than 15 months since the previous test;
- Allowing use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;
- The option of monitoring the activated carbon injection pressure or equivalent parameter; and
- Clarifying the exclusion of monitoring data from compliance calculations.

In response to the amended EGs, Maine DEP made two revisions to the 06-096 Code of Maine Regulations (CMR) Chapter 121, entitled “Emission Limitations and Emission Testing of Resource Recovery Facilities,” effective on November 14, 2007 and September 14, 2019, respectively. The provisions for new Large MWCs covered in 06-096 CMR Chapter 121, Section 6., entitled “Large Municipal Waste Combustor Units Subject to 40 C.F.R. Part 60, Subpart Eb” were excluded from the State Plan.

V. Why Did Maine DEP Submit a Small MWC State Plan?

The EPA originally promulgated the EGs for large and Small MWCs on December 19, 1995. In 1997, the United States Court of Appeals for the District of Columbia Circuit vacated the initial MWC unit rules, subparts Cb and Eb as they apply to MWC units with a capacity to

combust less than or equal to 250 TPD of MSW (i.e., Small MWCs). As a result, subparts Cb and Eb were amended to apply only to MWC units with the capacity to combust more than 250 TPD of MSW per unit (i.e., Large MWCs). In response to the court's decision, on December 6, 2000, EPA promulgated an NSPS applicable to new Small MWCs (i.e., capacities of 35 to 250 TPD), an EGs applicable to existing (i.e., construction commenced on or before August 30, 1999) Small MWCs. The NSPS and EGs are codified at 40 CFR part 60, subparts AAAA and BBBB, respectively (65 FR 76350 and 76378). The Small MWC rule regulates the following air pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

As required by Section 129(b)(3) of the Act, on January 31, 2003 EPA promulgated a Federal Plan (FP) for small MWCs that commenced construction on or before August 30, 1999. The FP is a set of maximum available control technology (MACT) requirements that implement the EG. It is applicable to those small, existing MWC units not specifically covered by an approved State Plan under sections 111(d) and 129 of the CAA. In addition, it fills a Federal enforceability gap until State Plans are approved and ensures that the MWC units stayed on track to complete, in an expeditious manner, pollution control equipment retrofits in order to meet the final compliance dates on or before of May 6, 2005.

Maine DEP revised the 06-096 CMR Chapter 121, entitled “Emission Limitations and Emission Testing of Resource Recovery Facilities” in 2007 and 2019 to regulate existing Small MWCs currently covered by the FP. Maine’s State Plan submission seeks Federal approval such that the FP will no longer apply to existing Small MWCs in Maine, and Maine will implement and enforce the State Plan in lieu of the FP. This State Plan incorporates the requirements in 40 CFR Part 60, Subparts B and BBBB.

VI. Review of Maine DEP’s State Plan

A. State Plan Elements Applicable to Large and Small MWCs

State Plans must include the following essential elements: (1) identification of legal authority, (2) identification of mechanism for implementation, (3) inventory of affected facilities, (4) emissions inventory, (5) emissions limits, (6) compliance schedules, (7) testing, monitoring, recordkeeping, and reporting, (8) public hearing records, and (9) annual state progress reports on facility compliance.

Maine DEP has demonstrated the state's legal authority to carry out the 111(d)/129 State Plan under state statutes of 38 Maine Revised Statutes sections 585 "Establishment of emission standards," 585-B "Hazardous air pollutant standards," and 590 "Licensing."

Maine's enforceable mechanisms for implementing the State Plan are 06-096 CMR Chapter 121, "Emission Limitations and Emission Testing of Resource Recovery Facilities" and Chapter 140, Part 70 "Air Emission License Regulations."

Maine DEP's State Plan provides an updated inventory of affected MWC facilities. Penobscot Energy Recovery Company, Limited Partnership, and ecomaine (formerly Regional Waste Systems, Inc.) are Large MWCs, and Mid-Maine Waste Action Corporation is a Small MWC. Two facilities have shut down, Maine Energy Recovery Company Limited Partnership and Northern Aroostook Regional Incinerator Facility (NARIF).¹ An inventory of the emissions from the affected sources has been provided as part of the State Plan.

Emissions limits, compliance schedules, testing, monitoring, recordkeeping, and reporting are established in the State Plan and apply to sources based on the size of the facility and the date of construction; the following Sections VII. B. and C. review the revisions to 06-096 CMR Chapter 121 that are at least as stringent as the Federal EGs. Note that the State Plan also provides the license limits for each of the identified sources; some license limits are more stringent than the emissions limitations established 06-096 CMR Chapter 121.

¹ NARIF was included in Maine DEP's inventory of sources, but the facility ceased operations in March 1991 pursuant to a consent decree with EPA, and the facility was never subject to Federal MWC standards.

Maine DEP's State Plan includes public hearing records and a commitment to submit annual state progress reports on facility compliance to EPA.

B. Revised Requirements for Large MWCs Constructed on or Before September 20, 1994 in 06-096 CMR Chapter 121

1. Emissions Limits

Emissions limits are established in 06-096 CMR Chapter 121 and incorporate limits by reference from 40 CFR Part 60, Subpart Cb except for where the state has more stringent standards. The State Plan has more stringent standards for mercury, sulfur dioxide and dioxans/furans.

2. Operating Practices

The State Plan requires affected sources to follow the operating practices specified in 40 CFR Part 60, Subpart Eb.

3. Operator Training

The State Plan requires operator training and certification as established under 40 CFR Part 60, Subpart Eb and according to the schedule specified in 40 CFR Part 60, Subpart Cb.

4. Compliance and Performance Testing Requirements

Compliance and performance testing requirements are incorporated by reference from 40 CFR Part 60, Subpart Eb except as provided for under 40 CFR Part 60, Subpart B. In addition, the State Plan establishes procedures for common stack testing, requirements for alternative performance testing schedule for dioxins/furans in certain conditions, requirements for initial performance testing, and requirements for emissions testing for arsenic, nickel, chromium and beryllium. Testing for arsenic, nickel, chromium and beryllium is not required by the Federal EGs.

5. Reporting, Recordkeeping and Compliance Schedules

The State Plan requires affected facilities to report to Maine DEP facility operating status and facility process data, pollutant emission data, combustion process data, and summary emission limitations as established by license conditions.

The State Plan requires emission test reports and recordkeeping to meet the requirements set forth in 40 CFR Part A, except for the siting requirements under 40 CFR Part 60, Subpart Eb. In addition, the State Plan also establishes requirements for reporting to Maine DEP.

The State Plan incorporates by reference the compliance schedule specified in 40 CFR Part 60, Subpart Cb and establishes licensing requirements for affected sources.

C. Requirements for Small MWCs Established in 06-096 CMR Chapter 121

1. Emissions Limits

Emission limits are incorporated by reference from 40 CFR Part 60, Subpart BBBB. The State Plan has more stringent standards for particulate matter, cadmium, lead, mercury, nitrogen oxides, dioxins/furans, sulfur dioxide, hydrogen chloride and carbon monoxide.

2. Operating Practices

The State Plan requires affected sources to follow the operating practices specified in 40 CFR Part 60, Subpart BBBB.

3. Operator Training

The State Plan requires operator training and certification as established under 40 CFR Part 60, Subpart BBBB.

4. Compliance and Performance Testing

The State Plan establishes requirements for owners and operators to prepare and submit a performance testing plan for approval by Maine DEP prior to facility start up. The State Plan establishes an emission testing schedule and a process to request an alternative testing schedule. The State Plan references EPA Methods from 40 CFR Part 60, Appendix A to establish requirements for emission testing of oxygen (or carbon dioxide), hydrogen chloride, particulate matter, metals and fugitive emissions. The State Plan requires all affected facilities to install and

operate instruments for continuous emissions monitoring for carbon monoxide, sulfur dioxide and opacity and specifies requirements for compliance demonstration and instrumentation, including reference to 40 CFR Part 60, Appendices B and F.

5. Reporting and Recordkeeping

The State Plan requires affected facilities to report to Maine DEP facility operating status and facility process data, pollutant emission data, combustion process data, and summary emission limitations as established by license conditions. The State Plan also establishes reporting requirements for exceedances, maintenance of records and submission of reports to Maine DEP.

VII. Why Is EPA Proposing to Approve Maine DEP's State Plans for Large and Small MWCs?

EPA has evaluated the revised State Plan for existing Large MWCs and the initial State Plan for existing Small MWCs submitted by Maine DEP for consistency with the Act, the May 2006 EGs for Large MWCs, the December 2000 EGs for Small MWCs and EPA guidelines and policy. EPA has determined that Maine DEP's State Plan that was submitted on December 24, 2019 meets all requirements and, therefore, EPA is proposing to approve MassDEP's Plan to implement and enforce the EGs, as they apply to existing Large and Small MWCs. Upon the effective date of this notice, the Federal Plan will no longer apply to existing Small MWCs in Maine and Maine will implement and enforce the State Plan in lieu of the Federal Plan.

EPA's proposal to approve Maine DEP's State Plan is based on our findings that:

(1) Maine DEP provided adequate public notice of public hearings for the proposed rule-making, which allows Maine to carry out and enforce provisions that are at least as protective as the EGs for Large and Small MWCs, and

(2) Maine DEP demonstrated its legal authority to: adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine

compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

VIII. Proposed Action

EPA is proposing to approve the Maine DEP's revised State Plan for existing Large MWCs and the initial State Plan for existing Small MWCs. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this *Federal Register*.

IX. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions of 06-096 CMR Chapter 12, entitled "Emissions Limitations and Emissions Testing of Resource Recovery Facilities," effective September 14, 2019, excluding Section 6., entitled "Large Municipal Waste Combustor Units Subject to 40 C.F.R. Part 60, Subpart Eb," which regulate emissions and emissions testing for large and small MWCs. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

X. Statutory and Executive order reviews

Under the Clean Air Act, the Administrator is required to approve a State Plan submission that complies with the provisions of the Act and applicable Federal regulations. See Clean Air Act sections 111(d) and 129(b); 40 CFR part 60, subparts B and Cb; and 40 CFR part 62, subpart A; and 40 CFR 62.04. Thus, in reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed

action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: September 15, 2022.

David Cash,
Regional Administrator,
EPA Region 1.

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